BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

STEPHEN	M. SMITH Claimant)
VS.	Claman)) Docket No. 227,363
SMITH & SMITH) DOCKET NO. 221,303
AND	Respondent)
CIGNA	Incurrence Corrier)
AND	Insurance Carrier)
WORKERS	S COMPENSATION FUND)

ORDER

This claim returns to the Board pursuant to the order for remand entered by the Court of Appeals in its unpublished decision filed January 19, 2001. In that decision, the Court of Appeals determined that claimant's permanent partial general disability should be limited to his nine percent functional impairment rating. The Court of Appeals stated, in part:

Under close scrutiny, even when the evidence is viewed in the light most favorable to Smith [claimant], we conclude the Board's determination that Smith sustained a sufficient wage loss from his 1994 injury to recover work disability benefits is not supported by substantial competent evidence. Smith admitted that not all his expenses and losses after 1994 were entirely due to his 1994 injury. The Board failed to take this into account when arriving at a wage loss percentage. Instead, the Board found that the entire loss sustained by Smith should be counted towards his work disability benefits. While Smith undoubtedly suffered some wage loss due to his 1994 injury, based on his testimony and supporting documents, it cannot be concluded which portion of Smith's loss is attributable to his 1994 injury and which portion is attributable to other causes.

The purpose of the Workers Compensation Act (Act) is to compensate employees for loss due to a qualifying injury. The Act does not envision compensation for loss falling outside this realm. Since Smith failed in his burden to establish what portion of his business losses were attributable to

his injury, Smith is limited to his functional impairment insofar as permanent partial disability benefits are concerned.

. . .

Reversed and remanded with directions to enter an award limited to Smith's 9 percent functional impairment.

The Board, following the directions of the Court of Appeals, finds and concludes that claimant has a nine percent permanent partial general disability.

AWARD

WHEREFORE, the Board modifies its November 30, 1999 Order and awards claimant benefits for a nine percent permanent partial general disability, as follows:

Stephen M. Smith is granted compensation from Smith & Smith and its insurance carrier for a June 3, 1994 accident and resulting nine percent permanent partial general disability. Mr. Smith is entitled to receive 79.43 weeks of temporary total disability benefits at \$313 per week, or \$24,861.59, plus 31.55 weeks of permanent partial disability benefits at \$313 per week, or \$9,875.15, making a total award of \$34,736.74, which is all due and owing less any amounts previously paid.

IT IS SO ORDE	RED.	
Dated this	day of May 2001.	
	BOARD MEMBER	
	BOARD MEMBER	
	ROARD MEMBER	

c: Beth R. Foerster, Topeka, KS
Gary R. Terrill, Overland Park, KS
David Berkowitz, Lawrence, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director